

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BROADCAST MUSIC, INC., : Related to *United States v. Broadcast*  
 : *Music, Inc.*, 64 Civ. 3787 (LLS)  
Petitioner, :  
 : 16 Civ. 02266 (LLS)  
-against- :  
LIBERMAN BROADCASTING, INC., : ~~PROPOSED~~ SCHEDULING ORDER LLS  
 : ORDER  
Respondent. :  
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Petitioner Broadcast Music, Inc. ("BMI"), by and through its undersigned counsel, and Respondent Liberman Broadcasting, Inc. ("LBI"), by and through its undersigned counsel (together the "Parties"), hereby submit this Proposed Scheduling Order pursuant to the Order for Conference Pursuant to Rule 16(b) entered on October 31, 2016.

The parties, by and through counsel, stipulate and agree to the following:

A. Date of Conference and Appearances for the Parties: The conference with the Court is scheduled on Friday December 2, 2016 at 12:30 p.m. in Courtroom 21C. James C. Fitzpatrick, Marlena C. Frantzides, and Hope Lloyd will appear for BMI. Jessica Stebbins Bina will appear for LBI.

B. Concise Statement of the Issues: This is a proceeding invoking this Court's rate-setting authority under Article XIV of the BMI Consent Decree. *United States v. Broadcast Music, Inc.*, 1966 Trade Cas. (CCH) ¶ 71,941 (S.D.N.Y. 1966), *as amended by* 1996-1 Trade Cas. (CCH) ¶ 71,378 (S.D.N.Y. 1994) (the "BMI Consent Decree"). It involves a determination of reasonable final license fees for the performances of music in the BMI repertory by radio stations owned by LBI for the period January 1, 2007 until December 31, 2009.

C. Case Schedule

1. Names of Persons to be Deposed and Schedule of Planned Depositions:

- a. The Parties agree that they are not in a position to name all witnesses that they might seek to depose at this time, as this case is in its preliminary stages, and no substantive discovery has yet taken place. Accordingly, each Party (i) reserves its right to object to the relevance of witnesses identified below; (ii) agrees either Party may seek to depose fact witnesses (party or non-party) other than those named below prior to the completion of fact discovery; and (iii) agrees to exchange initial disclosures in compliance with Rule 26(a)(1) of the Federal Rules of Civil Procedure on December 21, 2016 listing the individuals likely to have discoverable information.
- b. BMI currently plans to seek to depose the following individuals:
  - i. Lenard Liberman
  - ii. Winter Horton
  - iii. Eduardo Leon
  - iv. Blima Tuller
  - v. One or more Rule 30(b)(6) witnesses from LBI on topics identified through discovery.
- c. LBI currently plans to seek to depose the following individuals:
  - i. John Coletta
  - ii. Marvin Berenson
  - iii. Michael Steinberg
  - iv. Michael O'Neill
  - v. One or more Rule 30(b)(6) witnesses from BMI on topics identified through discovery.
- d. All fact depositions will be completed by June 30, 2017.

- e. Notwithstanding the June 30, 2017 deadline for fact witness depositions, any witnesses identified as trial witnesses after such date but not deposed during fact discovery will be produced for deposition within a reasonable time prior to trial.

2. Schedule for the Production of Documents:

- a. All written party and third-party fact discovery requests (other than contention interrogatories or discovery that constitutes follow-up to a party's responses to pending discovery) shall be served by April 28, 2017. Written responses and objections to such requests shall be served within thirty (30) days of service of the requests.
- b. Parties will produce documents in response to discovery requests on a rolling basis. Document production shall be substantially complete by May 31, 2017.

3. Expert Reports:

- a. Expert reports are to be exchanged by July 31, 2017.
- b. Rebuttal expert reports are to be exchanged by August 31, 2017.
- c. Expert discovery, including all expert depositions, will be completed by September 29, 2017.

4. Completion of Fact Discovery: Fact discovery will be completed by June 30, 2017. The parties will meet and confer in good faith on any necessary extension or other adjustment to such date as may be warranted.

*Status conf. re when to file Pro on Fri July 14, 2017 at 12:30 PM*

5. Dispositive Motions: The deadline for filing dispositive motions is October 13, 2017.

*L2S*

6. Petitioner BMI's Submission of Pre-trial Order Materials: BMI will submit its pre-trial order materials to LBI on November 10, 2017.

7. Respondent LBI's Submission of Pre-trial Order Materials: LBI will submit its pre-trial order materials on December 11, 2017.

8. Pre-trial Order: The Parties will submit a pre-trial order in a form conforming with the Court's instructions together with trial briefs and proposed findings of fact on January 10, 2018.

9. Pre-trial Conference: A final pre-trial conference pursuant to Fed. R. Civ. P. 16(d) will take place on \_\_\_\_\_.

D. Statement of Limitations on Discovery: The Parties agree that the proceeding will be subject to a protective order pursuant to subdivision (c) of Rule 26 of the Federal Rules of Civil Procedure. The Parties are currently engaged in drafting the protective order and will submit it to the Court for approval when agreed upon.

E. Statement of Any Discovery Issues, If Any, on which Counsel, After a Good-Faith Effort, Were Unable to Reach an Agreement: The parties have not yet determined whether there are any discovery issues about which they are unable to agree.

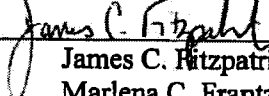
F. Anticipated Fields of Expert Testimony: BMI anticipates that it will designate an economic expert to testify as to reasonable license fees, structure, and terms, as well as to the use of BMI music by radio stations. LBI anticipates that it will designate industry and/or economic experts to testify as to reasonable license fees, structures, and terms, the use of BMI music by radio stations, and the impact of BMI's proposed rate structure on Spanish-language radio stations. The Parties reserve the right to designate experts on additional subjects based on information learned in discovery.

G. Anticipated Length of Trial and Whether to Court or Jury: The Parties anticipate that the trial of this matter will take five (5) trial days. This case will be tried to the Court.

H. Amending the Scheduling Order: This Scheduling Order may be altered or amended only on a showing of good cause not foreseeable at the time of the conference or when justice so requires.

Dated: December 1, 2016  
New York, New York

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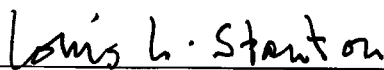
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**So Ordered**

Dated: Dec. 2, 2016  
New York, New York

  
LOUIS L. STANTON  
U. S. D. J.